IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6722 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDRAKANT BABULAL SHAH PRESIDENT DHARMENDRANAGAR SOC. - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR NM KAPADIA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/12/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing and setting the impugned final order as also attachment Notice dated 5.9.1994.

2.It appears that the petitioner has entered into the sale-deed as required under the provisions of the Bombay Stamp Act however, the proceedings under Section 32(A) of the Bombay Stamp Act came to be initiated with regard to the document registration No.2408 which was presented before the Sub-Registrar, Surat. It appears from the record that the proceedings came to be initiated by the Deputy Collector, Stamp Duty Valuation Organization, Division-2, Surat and some order came to be passed under Section 32(A) of the Bombay Stamp Act by which the petitioner was directed to pay the deficit stamp duty of Rs.10,000/- and penalty of Rs.250/-. It appears from the record that as the petitioner has not paid the said amount, the attachment notice came to be passed by the Mamlatdar & Ex-officio Recovery Officer (Stamp Duty & Registration Fee), Surat under Section 200 of the Bombay Land Revenue Code on 5.9.94 which is the subject matter of the present Special Civil Application.

3.It is the contention on behalf of the petitioner that the petitioner was neither served with any notice as required under Section 4 of the Bombay Stamp (Determination of Market Value of the Property) Rules;

1984 nor with any final order and straightaway the impugned attachment notice has been passed. It is true that no reply has been filed till date however, it is also required to be considered that nothing is on record to show that even the petitioner even after the attachment notice dated 5.9.94 has approached the competent authority i.e. Deputy Collector, Stamp Duty Valuation Organization, Division-2, Surat for obtaining the order, if any. No any application is on record and/or even there are no averments in the petition that the petitioner has ever applied and/or approached the authority for getting the copy of the order passed under Section 32(A) of the Bombay Stamp Act.

4. Under the circumstances and in absence of any final order on record, this Court cannot say whether the impugned final order is just and proper or not. What is on record is the attachment notice and it is the consequence to the final order. However, it will be open for the petitioner to approach the competent authority for getting the copy of the order passed under Section 32(A) of the Bombay Stamp Act and/or any other order by making suitable application and on receipt of the same, it will be open for the petitioner

to challenge the same before the appropriate forum. However, in absence of any order on record, no relief can be granted in favour of the petitioner.

5. Under the circumstances, without expressing any opinion on the merits of the impugned order, the present Special Civil Application is dismissed. Rule is discharged.

(M.R.SHAH, J.)

kdc.